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Robert F. Bauer  
Graham M. Wilson  
E: [RBauer@perkinscoie.com](mailto:RBauer@perkinscoie.com)  
[GWilson@perkinscoie.com](mailto:GWilson@perkinscoie.com)  
D: (202) 434-1602  
F: (202) 654-9104

BY MESSENGER

Federal Election Commission  
Office of Complaints Examination and Legal Administration  
Attn: Kim Collins, Paralegal  
999 E Street, NW  
Washington, DC 20436Re: MUR 6911  
DNC Services Corporation/ Democratic National Committee and Andrew Tobias,  
Treasurer

Dear Ms. Collins:

We write on behalf of the DNC Services Corporation/ Democratic National Committee and Andrew Tobias, Treasurer (collectively, the "DNC") in response to the complaint in MUR 6911. Because the complaint presents no facts that describe any violation of any statute or regulation, *see* 11 C.F.R. § 111.4(d)(3) (2014), the Commission should find no reason to believe that the DNC committed any violation and close the matter.

## FACTUAL DISCUSSION

The Complaint's sole factual allegation is that the DNC—like myriad other candidates and political committees—sent messages on Twitter, Inc.'s platform ("Twitter"), and did not display a notice stating "Paid for by the Democratic National Committee, [www.democrats.org](http://www.democrats.org). This communication is not authorized by any candidate or candidate's committee." This notice, according to the metrics used by Twitter to count characters, would require 150 characters, ten characters over the 140 character limit imposed by Twitter. Twitter's platform can be used for free by any registered user among the public at large.<sup>1</sup> When a user sends a message on Twitter, it sends a "tweet." When a user shares someone else's tweet with its own followers, it sends a "retweet." When a user begins a word with "#" within the tweet, it assigns a topic to that tweet called a "hashtag," so that users will find that tweet among others containing the same hashtag.<sup>2</sup>

The Complaint alleges no deception whatsoever by the DNC. The DNC's Twitter "handle" is "@TheDemocrats." Its profile—accessible through any tweet that it sends—clearly states "This

<sup>1</sup> See <https://twitter.com/tos?lang=en>.

<sup>2</sup> See <https://about.twitter.com/what-is-twitter/story-of-a-tweet>. See also Advisory Opinion 2011-02 n.3.

is the official Twitter account of the Democratic Party" and provides a link to the DNC's web site at [democrats.org](http://democrats.org).<sup>3</sup> That web site, in turn, contains a disclaimer that reads: "Paid for by the Democratic National Committee – (202) 863-8000 – This communication is not authorized by any candidate or candidate's committee."<sup>4</sup> That the complainant filed the instant Complaint is proof enough that he was fully able to identify the tweets as sent by the DNC.

Still, the Complaint alleges that "Twitter accounts are public websites"; that all "tweets," "retweets" and "hashtags" must have Commission disclaimers when sent by political committees; and that because the DNC did not include these disclaimers in its tweets, the DNC "should be disqualified from all future elections and fined." Compl. at 3.

### ANALYSIS

Amended most recently in 2002—more than five years before Twitter was formed<sup>5</sup>—the Federal Election Campaign Act of 1971's disclaimer statute requires certain communications to state who paid for them, whenever political committees make disbursements to finance them. *See* 52 U.S.C. § 30120(a) (2014). Commission regulations provide three relevant exceptions to this requirement. First, they entirely exclude communications over the Internet, except for those placed for a fee on another's Web site, and except for political committee Web sites and electronic mail of more than 500 substantially similar communications. *See* 11 C.F.R. §§ 100.26; 110.11(a)(1). Second, they exclude "small items upon which the disclaimer cannot be conveniently printed ..." *See id.* § 110.11(f)(i). Third, the regulations exclude advertisements "of such a nature that the inclusion of a disclaimer would be impracticable ..." *Id.* § 110.11(f)(ii).

The Commission has never found that the disclaimer requirement applies to Twitter communications. In one advisory opinion, the Commission held that the "small items" exception applied to wireless text messages which, like tweets, are limited to 160 characters per screen. *See* Advisory Opinion 2002-09 (Target Wireless).<sup>6</sup> In two other advisory opinions, the Commission approved requests by principal campaign committees to send tweets about books authored by the candidates, while giving no indication that a disclaimer requirement would

<sup>3</sup> The DNC's Twitter profile can be seen at <https://twitter.com/TheDemocrats>.

<sup>4</sup> *See* [www.democrats.org](http://www.democrats.org).

<sup>5</sup> *See* <https://about.twitter.com/company>.

<sup>6</sup> The Commission was unable to agree whether the disclaimer requirement applied to Google's "AdWords" program in Advisory Opinion Request 2010-19. However, the three Commissioners who would have applied the disclaimer requirement held that it could be met by displaying "the URL of the committee sponsor's website and a landing page that contains a full disclaimer meeting the requirements of 11 C.F.R. § 110.11." Concurring Statement of Vice Chair Bauerly and Commissioners Walther and Weintraub, Advisory Opinion Request 2010-19, at 2. As noted above, the DNC's Twitter profile follows this practice, providing a link to its web site URL, which in turn contains a full disclaimer. *See* [www.democrats.org](http://www.democrats.org).

apply. See Advisory Opinion 2011-02 (Scott Brown for U.S. Senate Committee), Advisory Opinion 2014-06 (Ryan for Congress, Inc.).

Because there is no authority to apply the disclaimer requirement to Twitter communications, the Complaint fails to present any violation of law. Because tweets, retweets and hashtags are Internet communications, and because they are not placed for a fee, they are not "public communications," and are not subject to the disclaimer requirement generally. See 11 C.F.R. § 100.26. Because they are neither "Web sites" nor "electronic mail," they are not required to carry disclaimers when sent or used by political committees. See *id.* § 110.11(a)(1). Tweets are prima facie outside the scope of the disclaimer requirement.

Yet even if one were to treat tweets, retweets and hashtags as "Web sites" or "electronic mail" as the Complaint imaginatively does, then the "small items" and "impracticability" exceptions would still apply. A tweet cannot contain more than 140 characters. To include the DNC disclaimer in a tweet would have taken 150 characters—a larger number of characters than the platform allows.<sup>7</sup> Accordingly, it would have been impossible, not merely impractical, to include the disclaimer in a tweet. To include a disclaimer in a retweet would have taken the same number of characters and would have similarly been impossible. Neither the Complaint nor common sense offers any idea how a disclaimer might be appended to a hashtag. It was more than reasonable for the DNC—like almost everyone else in the regulated community—to rely on Advisory Opinion 2002-09 and omit disclaimers from their tweets.

Thus, there is no reason to believe that the DNC violated any statute or regulation. The Commission should find accordingly, close the file in this matter, and take no further action.

Very truly yours,



Robert F. Bauer

Graham M. Wilson

Counsel to DNC Services Corporation/ Democratic National Committee and Andrew Tobias,  
Treasurer

<sup>7</sup> The disclaimer "Paid for by the Democratic National Committee, www.democrats.org. This communication is not authorized by any candidate or candidate's committee." takes 150 characters. If the DNC's phone number is used in place of the web address, such that the disclaimer reads "Paid for by the Democratic National Committee – (202) 863-8000 – This communication is not authorized by any candidate or candidate's committee." the disclaimer would take 144 characters and would still be over the 140 character limit. Finally, if the disclaimer used the street address of the DNC, and accordingly read "Paid for by the Democratic National Committee, 430 South Capitol Street, SE., Washington, DC 20003. Not authorized by any candidate or candidate's committee." it would take 156 characters.